

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANTHONY HAWORTH,

Plaintiff,

v.

CITY OF WALLA WALLA,
MARCUS GOODWATER,
individually and in his capacity as an
employee of the City of Walla Walla,
SCOTT BIEBER, individually and in
his capacity as an employee of the
City of Walla Walla, WALLA
WALLA COUNTY, MICHELLE
MORALES, individually and in her
capacity as an employee of Walla
Walla County, and JAMES NAGLE,
individually and in his capacity as an
employee of Walla Walla County,

Defendants.

NO. 4:19-CV-5254-TOR

ORDER GRANTING CITY OF
WALLA WALLA DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT is the City of Walla Walla Defendants' Motion for

Summary Judgment (ECF No. 19). This matter was heard with oral argument on

June 10, 2020. William A. Gilbert and Thomas E. Robertson appeared on behalf

1 of Plaintiff. Richard B. Jolley appeared on behalf of the City of Walla Walla,
2 Marcus Goodwater, and Scott Bieber (together, “Defendants”). Heather C. Yakely
3 appeared for the County of Walla Walla and its employees. The Court has
4 reviewed the record and files herein and considered the parties’ oral arguments,
5 and is fully informed. For the reasons discussed below, Defendants’ Motion for
6 Summary Judgment (ECF No. 19) is granted.

7 **BACKGROUND**

8 This case arises out of events occurring when Defendants investigated and
9 prosecuted Plaintiff for various sexual offenses in state criminal proceedings.
10 Plaintiff raises a series of Section 1983 claims for alleged violations of his
11 constitutional rights and tort claims under state law. ECF No. 1. The following
12 facts are not in dispute, except where noted. For purposes of summary judgment,
13 “[i]f a party fails to properly support an assertion of fact or fails to properly address
14 another party’s assertion of fact as required by Rule 56(c), the court may ...
15 consider the fact undisputed.” Fed. R. Civ. P. 56(e)(2).

16 The Court notes that although Plaintiff asserts that additional discovery is
17 needed in order to oppose certain arguments, Plaintiff’s general requests for
18 discovery to understand witnesses’ states of mind fail to make the requisite
19 showing of specific reasons Plaintiff cannot present facts essential to justify
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1 opposition to summary judgment. Fed. R. Civ. P. 56(d).¹ Formal discovery began
2 after the scheduling order was entered on February 28, 2020. ECF No. 14. A
3 month later, at Defendants' request, the Court suspended discovery because
4 qualified immunity confers upon officials a right, not merely to avoid standing
5 trial, but also to avoid the burdens of such pretrial matters as discovery. ECF No.
6 32 at 4-5. Additionally, the Court indicated that collateral estoppel may also be
7 dispositive, thereby justifying the suspension of discovery. The Court specifically
8 directed Plaintiff to "seek leave of Court for discovery on focused and relevant
9 factual issues not otherwise precluded by collateral estoppel" once Defendants file
10 their Statement of Material Facts Not in Dispute which raise issues that Plaintiff
11 lacks essential facts to justify his opposition to summary judgment. ECF No. 32 at
12 7. Plaintiff's opposition to summary judgment fails to meet this standard.

13 Plaintiff Anthony Haworth is a current Pasco Police Officer and a former
14 Franklin County Deputy Sheriff. ECF No. 33 at 8, ¶ 60. In 2003, Plaintiff married
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18 ¹ Plaintiff does not suffer from a lack of available evidence. The record on
19 this summary judgment hearing exceeds 3,000 pages of evidence from the criminal
20 proceedings.

1 Christina Najdowski-Skaggs. ECF NO. 41 at 2, ¶ 2. Christina² had two daughters
2 from a previous marriage: A.S., then 8-years old, and C.S., then six-years old. *Id.*
3 Plaintiff took the girls in and treated them as his own children. *Id.* Plaintiff and
4 Christina later had two children of their own. ECF No. 41 at 2, ¶ 3. In the spring
5 of 2015, Plaintiff's marriage to Christina began to unravel. ECF No. 41 at 3, ¶ 8.
6 Plaintiff filed for divorce in October 2015. ECF No. 41 at 4, ¶ 12. The divorce
7 was finalized in February 2016. ECF No. 41 at 5, ¶ 20. Plaintiff was obligated to
8 pay spousal support through March 15, 2017. ECF No. 41 at 5, ¶ 21.

9 In late March 2017, Christina contacted Benton and Franklin County
10 Support, Advocacy, Resource Center ("SARC") to report that A.S. had been raped
11 by Plaintiff when A.S. was a minor. ECF No. 41 at 5-6, ¶¶ 22. SARC told
12 Christina that A.S. would have to report this herself because A.S. was then an
13 adult. *Id.* A SARC representative then spoke to A.S. and sent a report to the
14 Franklin County Prosecutor. ECF No. 41 at 6, ¶ 23. Due to Plaintiff's
15 employment, Franklin County recognized it had a conflict of interest and referred
16 the case to Defendant Walla Walla County for investigation. *Id.* Walla Walla
17

18 ² Because many of the witnesses in this case share last names or changed last
19 names over the course of the investigation, this Order will refer to non-parties by
20 their first names or by initials.

1 County prosecutors contacted the Walla Walla Police Department, who assigned
2 Defendant Detective Marcus Goodwater to the case. *Id.*

3 On March 27, 2017, Goodwater interviewed A.S. ECF No. 33 at 6, ¶ 44.
4 A.S. reported that Plaintiff touched the inside of her vagina from when she was age
5 14 until she was age 19, and that Plaintiff had nonconsensual sexual intercourse
6 with her when she was 16 or 17 years old. ECF No. 33 at 6, ¶¶ 42-43. During this
7 interview, A.S. reported that she believed Plaintiff took photos of her on the night
8 he had sex with her and on other nights when he came into her room and touched
9 her vagina. ECF No. 33 at 9, ¶ 68. A.S. also reported that when she was about 15
10 years old, she noticed a hole in her bedroom wall, and that when she covered the
11 hole with a poster, Plaintiff told her to remove the poster so he could repair it.
12 ECF No. 33 at 9-10, ¶¶ 69-70.

13 On April 10, 2017, a search warrant was executed at Plaintiff's residence.
14 ECF No. 33 at 102, ¶¶ 1-2. While law enforcement searched Plaintiff's residence,
15 Plaintiff agreed to go with Goodwater and Detective Marlon Calton to discuss the
16 reasons for the search. ECF No. 33 at 2, ¶¶ 4, 6. Plaintiff was not placed under
17 arrest, was not placed in restraints, and was transported to a conference room at
18 Kennewick City Hall. ECF No. 33 at 2, ¶¶ 5, 7-8. Goodwater advised Plaintiff of
19 his *Miranda* rights, and Plaintiff voluntarily signed a *Miranda* waiver form. ECF
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1 No. 33 at 3, ¶¶ 12-13. The interview lasted approximately 35 minutes until
2 Plaintiff asked to end the interview. ECF No. 33 at 3, ¶¶ 15, 19.

3 The April 2017 search warrant authorized law enforcement to search
4 Plaintiff's entire residence and seize any electronic devices that may contain
5 evidence of rape of a child third degree, indecent liberties, or incest in the first
6 degree. ECF No. 33 at 10, ¶ 72. During the search, police located a hole in the
7 wall of A.S.'s former bedroom which would have allowed someone to look into
8 the room from the attic and which had been patched. ECF No. 33 at 10, ¶¶ 73-77.
9 Police also seized several electronic devices, including a Gateway computer. ECF
10 No. 33 at 10-11, ¶ 79. Police later recovered sexually explicit photos of A.S. from
11 the computer. ECF No. 33 at 11, ¶ 81-83. Defendants contend that the photos
12 were recovered from a backup of Plaintiff's iPhone on the computer, while
13 Plaintiff contends that the file location was a product of the family's shared iTunes
14 account settings. ECF No. 33 at 11, ¶¶ 81, 83; ECF No. 41 at 7-8, ¶¶ 30, 33.

15 On April 26, 2017, Plaintiff went to the Walla Walla Police Department to
16 retrieve the property that had been seized during the April 10, 2017 search warrant
17 execution. ECF No. 33 at 4, ¶¶ 25-26. At this time, Goodwater showed Plaintiff
18 images of A.S. which had been found on Plaintiff electronic equipment and
19 questioned Plaintiff as to how the images got there. ECF No. 33 at 5, ¶ 31.
20 Plaintiff asked to end the interview. ECF No. 33 at 5, ¶ 32-33.

1 On May 25, 2017, Plaintiff was charged with Rape in the Third Degree –
2 Domestic Violence, Indecent Liberties – Domestic Violence, Incest in the First
3 Degree – Domestic Violence, and Voyeurism – Domestic Violence. ECF No. 33
4 at 12, ¶ 89; *see* ECF No. 40-1.

5 During the course of Goodwater’s investigation, multiple witnesses who
6 contacted Goodwater or were contacted by Goodwater shared their opinions that
7 A.S. was untrustworthy or shared their knowledge of A.S.’s sexual history. ECF
8 No. 41 at 11-16, ¶¶ 43-51. These witnesses included Ty Maynard, A.S.’s friend
9 from high school; Cody Nunez, who had previously dated A.S. for two years;
10 Brittney Lynn Torrescano, A.S.’s friend; Erin McKever, a family friend; Bonnie
11 Najdowski, A.S.’s maternal grandmother; and C.S., A.S.’s sister. *Id.*; ECF No. 41
12 at 8, ¶ 34, 18-19, ¶ 62. Goodwater also interviewed Christina, Noelle LeCompte,
13 and Joanna Hensley during his investigation. ECF No. 33 at 11, ¶ 90.

14 On January 4, 2018, a second search warrant was issued in this case. ECF
15 No. 33 at 31, ¶ 163. The January 2018 warrant sought information associated with
16 Plaintiff’s Apple ID. ECF No. 33 at 25, ¶ 167.

17 On February 22, 2018, the trial court denied Plaintiff’s motion to dismiss the
18 criminal charges, finding that Plaintiff did not establish governmental misconduct
19 in Goodwater’s contact with Bonnie, A.S.’s maternal grandmother, or Goodwater’s
20 instruction to A.S. to remove a comment she had posted on a news article about the

1 case. ECF No. 20-2. Also on February 22, 2018, the trial court denied Plaintiff's
2 motion to dismiss the criminal charges, finding that sufficient evidence existed to
3 support a prima facie case and to allow a jury to convict Plaintiff on all four
4 charges. ECF No. 20-3.

5 On March 5, 2018, the trial court ruled that the April 2017 search warrant
6 was supported by probable cause, that the officers did not exceed the scope of the
7 warrant by searching the attic, that evidence seized related to the hole in A.S.'s
8 bedroom wall was beyond the scope of the warrant and would be suppressed, but
9 that observations and photographs of the hole did not exceed the scope of the
10 warrant. ECF No. 20-4.

11 On March 9, 2018, Plaintiff's criminal defense attorneys proffered evidence
12 that A.S. had sexual intercourse with Michael Torrescano on the night she had
13 alleged Plaintiff had sex with her. ECF No. 33 at 14, ¶ 101. Goodwater contacted
14 Mark Torrescano, Michael's father, regarding this new information and to confirm
15 Michael's contact information. ECF No. 33 at 14, ¶ 104. Goodwater told Mark
16 that Michael could be charged with a crime regarding the new allegations proffered
17 by Plaintiff's criminal defense attorneys. ECF No. 33 at 15, ¶ 108.

18 Christina also reached out to Heather Torrescano, Michael's mother, about
19 the new information. ECF No. 33 at 17, ¶ 121. Heather questioned Michael's
20 motives regarding this new testimony. *Id.* at ¶ 128. On March 17 and 18, 2018,

1 Heather contacted Michael and asked him to think about his actions before he
2 testified. ECF No. 33 at 18, ¶¶ 129, 132. On March 19, 2018, Heather left a
3 voicemail for Special Deputy Prosecuting Attorney Michelle Morales, reporting
4 that she felt she was being harassed by Plaintiff's criminal defense counsel. ECF
5 No. 33 at 19, ¶¶ 142-144. At the time of the voicemail, neither the state
6 prosecutors nor Goodwater knew of Heather. *Id.* at ¶ 145. At no time did the
7 prosecutors instruct Heather to attempt to persuade Michael to change or withhold
8 his testimony. ECF No. 33 at 20, ¶ 151.

9 Separately, A.S. spoke with her biological father, Arrow Skaggs, about the
10 case. ECF No. 33 at 20, ¶ 155. A.S. did not direct Arrow to withhold employment
11 from C.S. because of her potential testimony in this case. ECF No. 33 at 21, ¶
12 159.³

13 On June 14, 2018, Goodwater and Morales interviewed Michael. ECF No.
14 41 at 33, ¶ 109. During the interview, Michael opened his phone and passed it to
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16 ³ Plaintiff disputes this fact, asserting that "this cannot be addressed absent
17 formal discovery on the matter that was not allowed in the criminal case." ECF
18 No. 42 at 13, ¶ 159. This conclusory assertion fails to make the requisite showing
19 of specific reasons Plaintiff cannot present facts essential to justify opposition to
20 summary judgment. Fed. R. Civ. P. 56(d).

1 Goodwater to review messages exchanged between Michael and A.S. that were on
2 Michael's phone. ECF No. 41 at 33, ¶ 110. Later, it was discovered that some of
3 these messages had been deleted from Michael's phone. *Id.* at ¶ 111.⁴

4 On June 20, 2018, the trial court denied Plaintiff's motion to dismiss the
5 charges, finding that Plaintiff did not establish governmental misconduct related to
6 Plaintiff's allegations of witness tampering. ECF No. 20-5.

7 On July 18, 2018, the trial court ruled that the April 2017 and January 2018
8 search warrants were supported by probable cause but were unconstitutionally
9 broad and suppressed all evidence seized or discovered from the execution of those
10 warrants. ECF No. 20-6.

11 On July 20, 2018, a third search warrant was issued. ECF No. 33 at 32, ¶
12 186. The warrant lists the items to be searched and seized to include "electronic

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14 ⁴ Plaintiff contends this "raises the obvious rebuttable presumption that
15 Goodwater deleted the subject messages when he had the phone." ECF No. 41 at
16 34, ¶ 111. This allegation is inconsistent with Plaintiff's cited supporting evidence,
17 in which Michael testified that "lots of people had a hand on [his] phone" between
18 March 2018, when Michael provided the original message to Plaintiff's counsel,
19 and June 2018 when Goodwater took pictures of the altered messages on Michael's
20 phone. ECF No. 40-27 at 11.

1 devices listed below, of Anthony J. Haworth ... cellular telephones, desk top
2 computers, tablet computers, digital cameras, media storage devices, and/or
3 gaming devices." ECF No. 40-46.

4 On August 1, 2018, a search warrant was issued for Michael's phone. ECF
5 No. 40-60.

6 On August 20, 2018, the trial court ruled that evidence seized or discovered
7 from the execution of the July 2018 warrant was admissible at trial and suppressed
8 evidence of statements Plaintiff made in response to evidence discovered in the
9 unlawful April 10, 2017 search warrant and evidence and observations made by
10 police concerning the hole in A.S.'s bedroom wall. ECF No. 20-7.

11 On November 15, 2018, Plaintiff filed a Motion for Discretionary Review
12 with the Washington Court of Appeals, seeking review of the trial court's orders
13 denying Plaintiff's motion to suppress the July 20, 2018 warrant, order denying
14 Plaintiff's motion to quash the search warrant for Michael's phone, and order
15 denying Plaintiff's third motion to dismiss for governmental misconduct. ECF No.
16 40-15.

17 On November 26, 2018, Walla Walla County filed a notice of its termination
18 of its appointment as Special Deputy Prosecuting Attorney for Franklin County.
19 ECF No. 40-11.

1 On December 18, 2018, upon the Franklin County Prosecuting Attorney's
2 motion, the trial court ordered the case dismissed without prejudice. ECF No. 40-
3 12.

4 On December 19, 2018, the Adams County Office of Prosecuting Attorney
5 was appointed as a special prosecutor in the case. ECF No. 40-13. On March 15,
6 2019, Adams County Prosecuting Attorney Randy Flyckt wrote a letter to Shawn
7 Sant, Franklin County Prosecuting Attorney, recommending that the criminal case
8 not be re-filed. *Id.*

9 On April 16, 2019, the trial court ordered the case dismissed with prejudice.
10 ECF No. 20-8. On April 25, 2019, the Court of Appeals entered a Certificate of
11 Finality, granting Plaintiff's motion to voluntarily withdraw his appeal. ECF No.
12 40-16.

13 DISCUSSION

14 A. Summary Judgment

15 The Court may grant summary judgment in favor of a moving party who
16 demonstrates "that there is no genuine dispute as to any material fact and that the
17 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In ruling
18 on a motion for summary judgment, the court must only consider admissible
19 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002).
20 The party moving for summary judgment bears the initial burden of showing the

1 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.
2 317, 323 (1986). The burden then shifts to the non-moving party to identify
3 specific facts showing there is a genuine issue of material fact. See *Anderson v.*
4 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “The mere existence of a scintilla
5 of evidence in support of the plaintiff’s position will be insufficient; there must be
6 evidence on which the jury could reasonably find for the plaintiff.” *Id.* at 252.

7 For purposes of summary judgment, a fact is “material” if it might affect the
8 outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248. Further,
9 a material fact is “genuine” only where the evidence is such that a reasonable jury
10 could find in favor of the non-moving party. *Id.* Summary judgment will thus be
11 granted “against a party who fails to make a showing sufficient to establish the
12 existence of an element essential to that party’s case, and on which that party will
13 bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. In ruling on a
14 summary judgment motion, a court must construe the facts, as well as all rational
15 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*
16 *Harris*, 550 U.S. 372, 378 (2007).

17 **B. Collateral Estoppel**

18 Defendants move for summary judgment on the grounds that Plaintiff is
19 collaterally estopped from relitigating issues on which the trial court judge already
20 ruled. ECF No. 19 at 4-11.

1 “Under collateral estoppel, once a court has decided an issue of fact or law
2 necessary to its judgment, that decision may preclude relitigation of the issue in a
3 suit on a different cause of action involving a party to the first case.” *Allen v.*
4 *McCurry*, 449 U.S. 90, 94 (1980). The purpose of collateral estoppel is to “prevent
5 litigation of already determined causes, curtail multiplicity of actions, prevent
6 harassment in the courts, inconvenience to the litigants, and judicial economy.”

7 *State v. Dupard*, 93 Wash. 2d 268, 272 (1980). Application of collateral estoppel
8 to a state court judgment in a federal civil rights action is governed by state law.

9 See *Ayers v. City of Richmond*, 895 F.2d 1267, 1270 (9th Cir. 1990). Under
10 Washington law, the doctrine may be applied in a civil action in which a party
11 seeks to retry issues resolved in a previous criminal case. See *Hanson v. City of*
12 *Snohomish*, 121 Wash. 2d 552, 561 (1993). The burden is on the party asserting
13 collateral estoppel to show that:

14 (1) the issue decided in the prior adjudication is identical with the one
15 presented in the second action; (2) the prior adjudication must have ended in
16 a final judgment on the merits; (3) the party against whom the plea is
asserted was a party or in privity with the party to the prior adjudication; and
(4) application of the doctrine does not work an injustice.

17 *Thompson v. Dep’t of Licensing*, 138 Wash. 2d 783, 790 (1999) (citing *Nielson v.*
18 *Spanaway Gen. Med. Clinic, Inc.*, 135 Wash. 2d 255, 262-63 (1998)). The
19 doctrine of collateral estoppel “is not to be applied with a ‘hypertechnical’

1 approach but rather, ‘with realism and rationality.’” *State v. Harrison*, 148 Wash.
2d 550, 561 (2003) (*quoting Ashe v. Swenson*, 397 U.S. 436, 444 (1970)).

3 Plaintiff opposes the application of collateral estoppel, arguing that his
4 criminal case did not end in a final judgment on the merits and that collateral
5 estoppel would work an injustice. ECF No. 38 at 6-18. This Court finds no
6 Washington case law directly addressing the effect of collateral estoppel where a
7 party’s interlocutory appeal of an issue has been rendered moot by a voluntary
8 dismissal of the underlying claims. The Supreme Court of Washington has held
9 that a criminal conviction that is later overturned on appeal is sufficiently final to
10 constitute “conclusive” evidence of probable cause at an earlier stage in the
11 proceedings. *Hanson*, 121 Wash. 2d at 560; *see also Fontana v. City of Auburn*,
12 No. C13-0245-JCC, 2014 WL 4162528, at *7 (W.D. Wash. Aug. 21, 2014), *aff’d*
13 *in part*, 679 F. App’x 613 (9th Cir. 2017) (“[A] probable cause determination made
14 at a preliminary hearing is sufficiently firm to satisfy the requirements of the ‘final
15 judgment’ collateral estoppel requirement.”). However, collateral estoppel is not
16 applied when a “conviction was obtained by fraud, perjury or other corrupt
17 means.” *Hanson*, 121 Wash. 2d at 560.

18 Here, Plaintiff generally contends that his state court proceedings were the
19 product of perjury and other alleged governmental misconduct. Even if the trial
20 court’s orders in Plaintiff’s criminal case were sufficiently final to support the

1 application of collateral estoppel, the *Hanson* fraud exception would prohibit its
2 application here. Plaintiff is not collaterally estopped from relitigating issues
3 previously decided in his criminal case.

4 **C. Qualified Immunity**

5 Defendants move for summary judgment on Plaintiff's Section 1983 claim
6 against Goodwater and Bieber on the grounds that Goodwater and Bieber are
7 entitled to qualified immunity. ECF No. 19 at 15-18.

8 Qualified immunity shields government actors from civil damages unless
9 their conduct violates "clearly established statutory or constitutional rights of
10 which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S.
11 223, 231 (2009). In evaluating a state actor's assertion of qualified immunity, a
12 court must determine: (1) whether the facts, viewed in the light most favorable to
13 the plaintiff, show that the defendant's conduct violated a constitutional right; and
14 (2) whether the right was clearly established at the time of the alleged violation
15 such that a reasonable person in the defendant's position would have understood
16 that his actions violated that right. See *Saucier v. Katz*, 533 U.S. 194, 201-02
17 (2001) (receded from in *Pearson*, 555 U.S. 223 (holding that while *Saucier*'s two
18 step sequence for resolving government official's qualified immunity claims is
19 often appropriate, courts may exercise their sound discretion in deciding which of
20 the two prongs should be addressed first)). If the answer to either inquiry is "no,"

1 then the defendant is entitled to qualified immunity and may not be held personally
2 liable for his or her conduct. *Glenn v. Washington Cty.*, 673 F.3d 864, 870 (9th
3 Cir. 2011).

4 The second prong of the *Saucier* analysis must be “undertaken in light of the
5 specific context of the case, not as a broad general proposition.” *Mullenix v. Luna*,
6 136 S. Ct. 305, 308 (2015). “Only when an officer’s conduct violates a clearly
7 established constitutional right – when the officer should have known he was
8 violating the Constitution – does he forfeit qualified immunity.” *Lacey v.*
9 *Maricopa Cty.*, 693 F.3d 896, 915 (9th Cir. 2012).

10 1. *Goodwater: Failure to Investigate*

11 Plaintiff contends Goodwater violated his due process rights by generally
12 failing to investigate and collect exculpatory evidence. ECF No. 38 at 20-29.

13 The Due Process Clause provides protection for “what might loosely be
14 called the area of constitutionally guaranteed access to evidence.” *Arizona v.*
15 *Youngblood*, 488 U.S. 51, 55 (1988) (quoting *United States v. Valenzuela-Bernal*,
16 458 U.S. 858, 867 (1982)). “A police officer’s failure to preserve or collect
17 potential exculpatory evidence does not violate the Due Process Clause unless the
18 officer acted in bad faith.” *Cunningham v. City of Wenatchee*, 345 F.3d 802, 812
19 (9th Cir. 2003) (citing *Youngblood*, 488 U.S. at 58); *see also Miller v. Vasquez*,
20 868 F.2d 116, 1120 (9th Cir. 1989) (good faith failure to collect potentially

1 exculpatory evidence does not violate due process). “The presence or absence of
2 bad faith … turn[s] on the police’s knowledge of the exculpatory value of the
3 evidence at the time it was lost or destroyed.” *Cunningham*, 345 F.3d at 812
4 (quoting *Youngblood*, 488 U.S. at 58). Mere negligent or incomplete investigative
5 work is insufficient. *Id.* Additionally, “mere allegations that [police officers] used
6 interviewing techniques that were in some sense improper, or that violated state
7 regulations, without more, cannot serve as the basis for a [due process] claim under
8 § 1983.” *Devereaux v. Abbey*, 263 F.3d 1070, 1075 (9th Cir. 2001).

9 a. *Qualified Immunity: First Prong*

10 Plaintiff identifies a series of alleged misconduct that he claims collectively
11 show Goodwater’s investigation was conducted in bad faith. ECF No. 38 at 22-28.
12 In ruling on a summary judgment motion, a court must construe the facts, as well
13 as all rational inferences therefrom, in the light most favorable to the non-moving
14 party. *Scott*, 550 U.S. at 378. However, this does not relieve the non-moving party
15 of its obligation to identify specific facts showing there is a genuine issue of
16 material fact. *Anderson*, 477 U.S. at 256. Many of Plaintiff’s assertions about
17 Goodwater’s investigatory conduct are unsupported by Plaintiff’s citation to the
18 evidence, are based on unreasonable inferences from the existing evidence, or are
19 otherwise insufficient to support a finding of bad faith.

1 First, Plaintiff accuses Goodwater of destroying exculpatory evidence
2 throughout his briefing. Plaintiff argues Goodwater instructed A.S. to delete a
3 comment she posted on a news article about the case, and “[a] short time later,
4 A.S.’s laptop computer, cell phone, and journal – containing exculpatory evidence
5 – all ‘disappeared.’” ECF No. 38 at 22. This argument by innuendo, that
6 Goodwater encouraged A.S. to destroy exculpatory evidence contained in her
7 laptop, cellphone, and journal, has no basis in the evidence presented to the Court.
8 Moreover, the evidence on which Plaintiff relies to demonstrate that Goodwater
9 instructed A.S. to delete her online comment shows that A.S. had already deleted
10 the comment at the time of Goodwater’s request. ECF No. 40-52. Plaintiff has
11 failed to demonstrate the existence of a genuine issue of fact as to Goodwater’s
12 alleged destruction of evidence.

13 Second, Plaintiff asserts that Goodwater engaged in misconduct when
14 executing search warrants by “instruct[ing] officers to search for evidence (and in
15 locations) not identified in the original warrant.” ECF No. 38 at 22. The trial court
16 expressly found that officers did not exceed the scope of the warrant “because all
17 areas they searched were reasonably capable of holding the electronic evidence
18 described in the warrant.” ECF No. 20-4 at 14. As discussed *supra*, this ruling is
19 not entitled to preclusive effect in the current proceeding. However, even if
20 Plaintiff’s characterization is accepted as correct and Goodwater exceeded the

1 scope of the warrant, the trial court's affirmation of Goodwater's actions
2 undermines the argument that these actions were taken in bad faith. *See*
3 *Cunningham*, 345 F.3d at 812.

4 Third, Plaintiff argues throughout that Goodwater intentionally ignored,
5 failed to document, or failed to believe different witness accounts, particularly
6 reports that A.S. was not credible or was sexually promiscuous. ECF No. 38 at 22-
7 28. There is no general due process right to have a criminal investigation carried
8 out in a particular way. *Devereaux*, 263 F.3d at 1075. Plaintiff's assertions that
9 Goodwater should have fully credited exculpatory witnesses states no claim for a
10 due process violation. Moreover, whether or not A.S. was sexually promiscuous is
11 not relevant or admissible in this sort of prosecution.

12 Fourth, Plaintiff argues that when Michael Torrescano offered exculpatory
13 evidence, Goodwater "turned on Torrescano" by obtaining a search warrant for
14 Michael Torrescano's phone and causing the warrant to be wrongfully executed.
15 ECF No. 38 at 23-24. Even accepting Plaintiff's characterizations of events as
16 true, Plaintiff fails to establish how alleged misconduct directed at Michael
17 Torrescano contributes to a violation of Plaintiff's due process rights. *Id.*

18 Fifth, Plaintiff argues that Goodwater committed perjury throughout the
19 criminal proceedings. ECF No. 38 at 27. However, as was developed on the
20

1 record during oral argument, Plaintiff's accusations are not substantiated by the
2 specific evidence he cites in support of this accusation.

3 Viewed individually and looking at the totality of circumstances, Plaintiff
4 fails to offer sufficient evidence to demonstrate an outstanding issue of fact on
5 whether Goodwater's investigation was conducted in bad faith. Because Plaintiff
6 has failed to show that Goodwater's conduct violated Plaintiff's due process right,
7 Goodwater is entitled to qualified immunity.

8 ***b. Qualified Immunity: Second Prong***

9 Even if Plaintiff could establish Goodwater's investigation was done in bad
10 faith and violated his right to due process, Goodwater would still be entitled to
11 qualified immunity under the second prong of the *Saucier* analysis. "The relevant,
12 dispositive inquiry in determining whether a right is clearly established is whether
13 it would be clear to a reasonable officer that his conduct was unlawful in the
14 situation he confronted." *Saucier*, 533 U.S. at 202. As a general matter, the due
15 process protection in "constitutionally guaranteed access to evidence" was clearly
16 established at the time of the events in question. *See Youngblood*, 488 U.S. at 55.
17 However, in the specific context of this case, Goodwater's conduct was reasonable.

18 Even when the evidence is construed in the light most favorable to Plaintiff,
19 Goodwater could not have understood that his actions violated Plaintiff's due
20 process rights. *Saucier*, 533 U.S. at 201-02. Over the course of the investigation,

1 the trial court repeatedly upheld Goodwater's investigation against Plaintiff's
2 challenges based on the same alleged governmental misconduct that Plaintiff offers
3 in support of his due process claim. *See* ECF No. 20-3 (finding sufficient evidence
4 existed to convict Plaintiff of the criminal charges, even considering witness
5 statements that A.S. was untrustworthy and that she may have made inconsistent
6 statements); ECF No. 20-4 (finding the search warrant of Plaintiff's home was
7 supported by probable cause and observations of the alleged peep hole were
8 admissible); ECF No. 20-5 (finding no presence of witness tampering); ECF No.
9 20-6 (concluding that the warrants in the criminal case were supported by probable
10 cause). Even assuming Plaintiff could establish that the totality of Goodwater's
11 investigation was conducted in bad faith, Goodwater could still reasonably believe
12 his conduct was lawful because the trial court repeatedly upheld the challenged
13 conduct as the investigation continued. Indeed, the Ninth Circuit has declined to
14 find bad faith and deny qualified immunity where the police officer "likely
15 believed his tactics were lawful." *Cunningham*, 345 F.3d at 812. Because
16 Plaintiff's claim fails both prongs of the *Saucier* qualified immunity test,
17 Goodwater is entitled to summary judgment on Plaintiff's Section 1983 claim.

18 2. *Bieber: Ratification of Goodwater's Conduct*

19 Plaintiff contends Walla Walla Police Chief Bieber violated Plaintiff's due
20 process rights because he "ratified Goodwater's unconstitutional conduct." ECF

1 No. 38 at 31. “Liability under section 1983 arises only upon a showing of personal
2 participation by the defendant. A supervisor is only liable for constitutional
3 violations of his subordinate if the supervisor participated in or directed the
4 violations, or knew of the violations and failed to act to prevent them.” *Taylor v.*
5 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff makes no allegation, much less
6 identifies evidence, of Bieber’s personal participation in Goodwater’s
7 investigation. ECF No. 38 at 31. The only evidence of any action taken by Bieber
8 in this case is that, after the criminal charges were dismissed, Bieber posted
9 comments on social media about the case. *Id.* Based on this alone, Plaintiff
10 concludes that Plaintiff’s “version of the facts, bolstered by reasonable inferences”
11 show that Bieber failed to intervene in Goodwater’s purported violation of
12 Plaintiff’s due process rights.

13 Even if Plaintiff could establish Goodwater’s investigation violated his due
14 process rights, Plaintiff fails to establish any issue of fact showing Bieber’s
15 “personal participation” in the investigation. *Taylor*, 880 F.2d at 1045. Plaintiff’s
16 vague allusion to “reasonable inferences” to be drawn from the evidence fails to
17 meet even adequate pleading standards, let alone satisfy his burden on summary
18 judgment to identify specific facts showing there is a genuine issue of material
19 fact. *Anderson*, 477 U.S. at 256; see *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (a
20 plaintiff “must demonstrate ‘more than a sheer possibility that a defendant has

1 acted unlawfully.””) (citation omitted). Because Plaintiff has failed to show that
2 Bieber’s conduct violated Plaintiff’s due process right, Bieber is entitled to
3 qualified immunity. Both Goodwater and Bieber are entitled to summary
4 judgment on Plaintiff’s Section 1983 claim.

5 **D. Section 1983: Municipal Liability**

6 Defendants move for summary judgment on Plaintiff’s Section 1983 claim
7 against Defendant City of Walla Walla and Bieber in his official capacity. ECF
8 No. 18 at 18-20. “A suit against a governmental officer in his official capacity is
9 equivalent to a suit against the governmental entity itself.” *Larez v. City of Los*
10 *Angeles*, 946 F.2d 630, 646 (9th Cir. 1991).

11 “In order to set forth a claim against a municipality under 42 U.S.C. § 1983,
12 a plaintiff must show that the defendant’s employees or agents acted through an
13 official custom, pattern or policy that permits indifference to, or violates, the
14 plaintiff’s civil rights; or that the entity ratified the unlawful conduct.” *Shearer v.*
15 *Tacoma Sch. Dist. No. 10*, 942 F. Supp. 2d 1120, 1135 (W.D. Wash. 2013) (citing
16 *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690-91 (1978)). A plaintiff must
17 show that “through its *deliberate* conduct, the municipality was the ‘moving force’
18 behind the injury alleged.” *Bd. of Cty. Comm’rs of Bryan Cty., Okl. v. Brown*, 520
19 U.S. 397, 404 (1997) (emphasis in original). Section 1983 liability cannot attach to
20 municipal inaction to correct a municipal employee’s actions. *Gillette v. Delmore*,

1 979 F.2d 1342, 1348 (9th Cir. 1992). “To hold [municipalities] liable under
2 section 1983 whenever policymakers fail to overrule the unconstitutional
3 discretionary acts of subordinates would simply smuggle *respondeat superior*
4 liability into section 1983 law....” *Id.*

5 Plaintiff argues that Bieber is liable in his official capacity as Chief of Police
6 because Bieber acted as a “final policymaker” when he ratified Goodwater’s
7 investigatory actions. ECF No. 38 at 32-33. However, as explained *supra*,
8 Plaintiff identifies no specific conduct attributable to Bieber in this case, aside
9 from a social media post Bieber wrote after the case was dismissed. ECF No. 38 at
10 31. Plaintiff also asserts that he “has plausibly alleged unlawful customs and
11 practices” implemented by the City. ECF No. 38 at 33. However, Plaintiff
12 identifies no specific evidence of these customs and practices in support of this
13 conclusion. *Id.* At most, Plaintiff’s Statement of Disputed Facts contends that
14 Goodwater unlawfully concluded witness interviews with a *Smith* affidavit, which
15 Goodwater stated was done pursuant to department policy. ECF No. 41 at 27, ¶
16 91. However, Plaintiff develops no argument as to how or why Goodwater’s use
17 of the *Smith* affidavit was unlawful or how it contributed to a deprivation of
18 Plaintiff’s rights.

19 Plaintiff fails to establish any issue of fact that the City or Bieber engaged in
20 any deliberate conduct that was a “moving force” behind any alleged constitutional

1 injury Plaintiff suffered. *Brown*, 520 U.S. at 404. Defendants are entitled to
2 summary judgment on Plaintiff's Section 1983 claim against the City of Walla
3 Walla and Bieber in his official capacity.

4 **E. Civil Rights Conspiracy**

5 Defendants move for summary judgment on Plaintiff's conspiracy claim.
6 ECF No. 19 at 20-21. The Complaint alleges a cause of action for conspiracy
7 under both 42 U.S.C. § 1983 and 42 U.S.C. § 1985.

8 To establish a conspiracy claim under Section 1983, a plaintiff must show
9 "(1) the existence of an express or implied agreement among the defendant officers
10 to deprive him of his constitutional rights, and (2) an actual deprivation of those
11 rights resulting from that agreement." *Avalos v. Baca*, 596 F.3d 583, 592 (9th Cir.
12 2010). "Such an agreement need not be overt, and may be inferred on the basis of
13 circumstantial evidence such as the actions of the defendants." *Crow v. Cty. of San
14 Diego*, 608 F.3d 406, 440 (9th Cir. 2010) (citation omitted). However, to be liable,
15 "each participant must at least share the common objective of the conspiracy." *Id.*

16 To establish a conspiracy claim under Section 1985(3), a plaintiff must
17 show: "(1) a conspiracy; (2) for the purpose of depriving, either directly or
18 indirectly, any person or class of persons of the equal protection of the laws, or of
19 equal privileges and immunities under the laws; and (3) an act in furtherance of
20 this conspiracy; (4) whereby a person is either injured in his person or property or

1 deprived of any right or privilege of a citizen of the United States.” *Sever v.*
2 *Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992). A Section 1985(3)
3 conspiracy claim must allege “invidiously discriminatory, racial or class-based
4 animus.” *Caldeira v. Cty. of Kauai*, 866 F.2d 1175, 1182 (9th Cir. 1989). Under
5 Ninth Circuit law, this requires that “either the courts have designated the class in
6 question as a suspect or quasi-suspect classification requiring more exacting
7 scrutiny or that Congress has indicated through legislation that the class required
8 special protection.” *Sever*, 978 F.2d at 1536 (quoting *Schultz v. Sundberg*, 759
9 F.2d 714, 718 (9th Cir. 1985)).

10 As discussed *supra*, Plaintiff has failed to show any actual violation of his
11 constitutional rights. Even if he could, his conspiracy allegations fail. Plaintiff
12 argues Goodwater and Morales conspired to deprive him of his rights. However,
13 even construing the evidence in the light most favorable to Plaintiff, Plaintiff fails
14 to show an express or implied agreement between Goodwater and Morales to
15 violate Plaintiff’s rights.

16 First, Plaintiff identifies the January 4, 2018 and July 20, 2018 search
17 warrants for Plaintiff’s property as evidence of a conspiracy. ECF No. 38 at 34
18 (citing ECF No. 40 at 12-13, ¶ 46). However, a review of Plaintiff’s supporting
19 exhibits shows that the January 4, 2018 search warrant was requested by
20 Goodwater and documents no involvement by Morales. ECF No. 40-43. The July

1 20, 2018 search warrant is supported by affidavits from Detective Loney, who
2 reviewed Goodwater's report, and from Morales, but similarly documents no
3 interaction between Goodwater and Morales in the warrant application process.
4 That Goodwater and Morales worked on his criminal case and each provided
5 affidavits for different search warrants which were later suppressed fails to show or
6 even imply the meeting of the minds that Plaintiff alleges.

7 Second, Plaintiff identifies the disappearance of A.S.'s phone, laptop, and
8 journal as evidence of conspiracy. ECF No. 38 at 34 (citing ECF No. 40 at 25-26,
9 ¶ 61). In support of this assertion, Plaintiff's counsel declares that Goodwater and
10 Morales "were aware [A.S.] had the journal, cell phone and laptop in her
11 possession at some point in the case ... [and] did nothing to preserve the
12 evidence." ECF No. 40 at 26, ¶ 61. As above, this assertion by implication that
13 Goodwater and Morales conspired to destroy evidence is supported by no factual
14 evidence.

15 Third, Plaintiff identifies a series of actions taken to obtain, and later defend
16 in court, the search warrant issued for Michael Torrescano's phone. ECF No. 38 at
17 34 (citing ECF No. 40 at 39-40, ¶ 108 and 41-45, ¶ 111-114). Even taking these
18 allegations of events in the light most favorable to Plaintiff, Plaintiff fails to
19 articulate how a supposed conspiracy between Goodwater and Morales to obtain
20

1 and defend an illegal search warrant for Michael's property causes a violation of
2 Plaintiff's rights.

3 Overall, construing the evidence in the light most favorable to Plaintiff,
4 Plaintiff fails to demonstrate the existence of a genuine issue of fact material to his
5 conspiracy claim. A party opposing summary judgment "may not rest upon the
6 mere allegations or denials of his pleading, but ... must set forth specific facts
7 showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248.
8 Plaintiff's conclusory allegations of a conspiracy fail to meet this standard.
9 Defendants are entitled to summary judgment on Plaintiff's conspiracy claim.

10 **F. Malicious Prosecution**

11 Defendants move for summary judgment on Plaintiff's malicious
12 prosecution claim. ECF No. 19 at 24-25. "Malicious prosecution claims are not
13 favored in law" for public policy reasons. *Peasley v. Puget Sound Tug & Barge*
14 Co., 13 Wash. 2d 485, 496-97 (1942). To state a malicious prosecution claim
15 under Washington law, a plaintiff must show: "(1) that the prosecution claimed to
16 have been malicious was instituted or continued by the defendant; (2) that there
17 was want of probable cause for the institution or continuation of the prosecution;
18 (3) that the proceedings were instituted or continued through malice; (4) that the
19 proceedings terminated on the merits in favor of the plaintiff, or were abandoned;
20 and (5) that the plaintiff suffered injury or damages as a result of the prosecution."

1 *Hanson*, 121 Wash. 2d at 558. “[P]robable cause is a complete defense to an
2 action for malicious prosecution.” *Id.*

3 “Probable cause requires a showing that ‘the facts and circumstances within
4 the arresting officer’s knowledge and of which the officer has reasonably
5 trustworthy information are sufficient to warrant a person of reasonable caution in
6 a belief that an offense has been committed.’” *State v. Barron*, 170 Wash. App.
7 742, 750 (2012). “A prima facie case of want of probable cause is established by
8 proof that the proceedings were dismissed in favor of the plaintiff, but that prima
9 facie proof may be rebutted by the defendant’s evidence.” *Youker v. Douglas Cty.*,
10 162 Wash. App. 448, 461 (2011). Here, it is undisputed that A.S. reported the
11 alleged assault to Goodwater, that Goodwater obtained a search warrant based on
12 A.S.’s report, and that the search of Plaintiff’s home revealed sexually explicit
13 pictures of A.S. that were attributable to a location on Plaintiff’s iPhone. Probable
14 cause is a low threshold. Despite the other exculpatory evidence Plaintiff identifies
15 from over the course of the investigation, the undisputed facts show that
16 Defendants had probable cause to initiate and pursue criminal charges against
17 Plaintiff throughout the prosecution. Because the existence of probable cause is a
18 complete defense to malicious prosecution, Defendants are entitled to summary
19 judgment on this claim.

1 **G. Outrage**

2 Defendants move for summary judgment on Plaintiff's outrage claim. ECF
3 No. 19 at 32-33. "The elements of the tort of outrage are '(1) extreme and
4 outrageous conduct; (2) intentional or reckless infliction of emotional distress, and
5 (3) actual result to the plaintiff of severe emotional distress.'" *Fondren v. Klickitat*
6 *Cty.*, 79 Wash. App. 850, 861 (1995) (citation omitted). "To be held liable for the
7 tort of outrage, the defendants' conduct must have been 'so outrageous in
8 character, and so extreme in degree, as to go beyond all possible bounds of
9 decency, and to be regarded as atrocious, and utterly intolerable in a civilized
10 community.'" *Spurrell v. Bloch*, 40 Wash. App. 854, 862 (1985) (citation omitted).

11 "The question whether certain conduct is sufficiently outrageous is
12 ordinarily a question for the trier of fact," but the court "must determine in the first
13 instance that reasonable minds could differ on whether the conduct has been
14 sufficiently extreme and outrageous to result in liability." *Spurrell*, 40 Wash. App.
15 at 862. "In making this determination, the court must consider: (1) the position
16 occupied by the defendants; (2) whether plaintiffs were particularly susceptible to
17 emotional distress, and if defendant knew this fact; (3) whether defendants'
18 conduct may have been privileged under the circumstances; (4) whether the degree
19 of emotional distress caused by a party was severe as opposed to mere annoyance,
20 inconvenience, or normal embarrassment; and (5) whether the actor was aware that

1 there was a high probability that his or her conduct would cause severe emotional
2 distress and proceed in a conscious disregard of it.” *Id.* at 862-63. “The lack of
3 probable cause is not an element of [the tort of outrage], nor does probable cause
4 establish a complete defense.” *Fondren*, 79 Wash. App. at 862.

5 Defendants contend that Plaintiff cannot identify conduct rising to the
6 extreme level to support a claim for outrage. ECF No. 19 at 33. Plaintiff responds
7 that he has identified evidence of witness intimidation, soliciting the destruction of
8 evidence, and unlawfully obtaining and executing search warrants. ECF No. 38 at
9 35-36. However, Plaintiff again overstates the evidence on which he relies.

10 Plaintiff’s allegations of witness tampering are not supported by evidence.
11 For example, Plaintiff alleges that Arrow Skaggs withheld employment
12 opportunities from C.S. after C.S. gave negative information about A.S. to
13 Goodwater, but then merely conjectures that this action was caused by A.S.
14 manipulating the situation. ECF No. 40 at 6, ¶¶ 31. Plaintiff’s conclusory
15 assertion that “Goodwater did nothing about the alleged witness tampering – to the
16 point that [] one might interpret his actions as encouraging the practice” is
17 similarly unsupported by any factual evidence to indicate that Goodwater should
18 have intervened in the dispute between Arrow and C.S.. ECF No. 40 at 7, ¶ 32.
19 Elsewhere, Plaintiff alleges Goodwater threatened Mark Torrescano by telling him
20 that his son, Michael Torrescano, could be charged with a crime despite there

1 being no basis to criminally charge Michael. ECF No. 41 at 30, ¶ 98 (citing ECF
2 No. 40 at 33-34, ¶ 84). However, the evidence on which Plaintiff relies indicates
3 Michael reasonably could have been charged with a crime. ECF No. 41 at 31, ¶
4 103. Plaintiff's characterization of Goodwater's statement to Mark as a threat is
5 not supported by even a reasonable inference from the evidence. Plaintiff's other
6 allegations regarding the destruction of evidence and search warrant misconduct
7 have been addressed throughout this order.

8 Plaintiff fails to develop a genuine issue of fact as to whether the conduct at
9 issue in this case is sufficiently extreme and outrageous as to support tort liability.
10 Defendants are entitled to summary judgment on Plaintiff's outrage claim.

11 **H. Other Claims**

12 Defendants move for summary judgment on Plaintiff's RICO, Washington
13 constitutional due process, defamation/libel/false light, negligent infliction of
14 emotional distress, and negligence claims. ECF Nos. 21-23, 25-32, 33-37.
15 Plaintiff agrees to dismiss all five of these claims. ECF No. 38 at 38. Defendants
16 are entitled to summary judgment on these claims.

17 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 18 1. The City Defendants' Motion for Summary Judgment (ECF No. 19) is
19 **GRANTED.** All claims against Marcus Goodwater, Scott Bieber, and
20 the City of Walla Walla are dismissed.

- 1 2. The Clerk of Court shall adjust the docket accordingly.
2 3. The Court's suspension of discovery entered at ECF No. 32 at 9, is
3 **LIFTED**. Discovery may proceed with the remaining parties.

4 The District Court Executive is directed to enter this Order, furnish copies to
5 counsel, and terminate Marcus Goodwater, Scott Bieber, and the City of Walla
6 Walla as defendants in this matter.

7 **DATED** June 11, 2020.



8 A handwritten signature in blue ink that reads "Thomas O. Rice".
9 THOMAS O. RICE
10 Chief United States District Judge